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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ronald M Amerson, et al.,

10 Plaintiffs,

11 v.

12 County of Yavapai, et al.,

13 Defendants.
14

No. CV-22-08117-PCT-MTL

ORDER

15 **I.**

16 The matter is before the Court on Defendants' Motion to Dismiss for Failure to State
17 a Claim (Doc. 6) and Plaintiffs' Motion for Sanctions and Motion to Strike Defendants'
18 Motion to Dismiss (Doc. 7). The instant action originated in Yavapai County Superior
19 Court where Plaintiffs filed their Complaint on March 21, 2022. (Doc. 1 at 1.) Defendants
20 subsequently filed a Notice of Removal with this Court. (Doc. 1.) The Court's previous
21 Order required the parties to file supplemental briefing addressing whether the Court has
22 subject matter jurisdiction over this action. (Doc. 14.) For the following reasons, the Court
23 finds that subject matter jurisdiction exists and grants Defendants' Motion to Dismiss.*

24 **II.**

25 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*
26 *of Am.*, 511 U.S. 375, 377 (1994). Subject matter jurisdiction involves a court's power to
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* Oral argument would not have aided the Court's decisional process. *See Patridge v. Reich*,
141 F.3d 920, 926 (9th Cir. 1998); *see also* LRCiv 7.2(f); Fed. R. Civ. P. 78(b).

1 hear a case, and it can never be forfeited or waived. *United States v. Cotton*, 535 U.S. 625,
 2 630 (2002). To determine whether subject matter jurisdiction exists, the Court “considers
 3 only ‘the pleadings filed at the time of removal without reference to subsequent
 4 amendments.’” *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020) (quoting
 5 *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1085 n.1 (9th Cir.
 6 2009)). The general rule, known as the “well-pleaded complaint rule,” is that a civil action
 7 arises under federal law for purposes of 28 U.S.C. § 1331 when a federal question appears
 8 on the face of the complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).
 9 Nonetheless, federal courts are charged with liberally construing the “inartful pleading of
 10 pro se litigants.” *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) (internal marks
 11 and citations omitted).

12 Here, Plaintiffs’ supplemental briefing makes clear that Plaintiffs intend to bring a
 13 “federal cause of action under the Americans with Disabilities Act.” (Doc. 16 at 1.) Despite
 14 making only a passing reference to the Americans with Disabilities Act (“ADA”), the
 15 Court, applying a liberal construction of the Complaint, concludes that Plaintiffs assert an
 16 ADA claim – thus conferring jurisdiction. *See Wisconsin Dep’t of Corr. v. Schacht*, 524 U.S.
 17 381, 386 (1998) (“[T]he presence of even one claim ‘arising under’ federal law is sufficient
 18 to satisfy the requirement that the case be within the original jurisdiction of the district
 19 court for removal.”). The Court has supplemental jurisdiction over the related state law
 20 intentional infliction of emotional distress claim as it stems from the same common nucleus
 21 of operative fact. *See In re Pegasus Gold Corp.*, 394 F.3d 1189, 1195 (9th Cir. 2005).

22 III.

23 Defendants’ Motion to Dismiss is well taken. A court may dismiss a complaint “if
 24 there is a lack of a cognizable legal theory or the absence of sufficient facts alleged under
 25 a cognizable legal theory.” *Conservation Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th
 26 Cir. 2011). A complaint must assert sufficient factual allegations that, when taken as true,
 27 “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 28 (2009). Plausibility is more than mere possibility. A plaintiff is required to provide “more

1 than labels and conclusions, and a formulaic recitation of the elements of a cause of action
2 will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

3 Plaintiffs’ Complaint fails to meet these standards. The Complaint makes one
4 passing reference to the ADA, followed, two paragraphs later, by a bare conclusory
5 allegation that being informed of the continuation of a hearing constitutes a “direction
6 violation of ADA (sic).” (Doc. 1-1 at 7.) From what the Court can ascertain, Plaintiffs’
7 ADA claim relates to the duty to provide reasonable accommodation or reasonable
8 modification for disabled persons under Title II of the ADA. *See* 42 U.S.C. § 12132. The
9 duty to provide such accommodations or modifications arises when a policy, practice or
10 procedure discriminates based on disability. *Weinreich v. Los Angeles Cnty. Metro. Transp.*
11 *Auth.*, 114 F.3d 976, 979 (9th Cir. 1997). But Plaintiffs’ Complaint leaves the Court
12 guessing as to what the requested accommodation was and how Defendants failed to
13 provide it, let alone what policy, practice, or procedure discriminated on the basis of
14 disability. Plaintiffs’ sole conclusory allegation does not plausibly allege an ADA
15 violation.

16 The Complaint also fails to plausibly allege intentional infliction of emotional
17 distress. Plaintiffs’ Complaint is rife with conclusory allegations – often, merely reciting
18 an element of the claim. For example, Plaintiffs say that an email was sent “with the intent
19 to inflict emotional stress.” (Doc. 1-1 at 7.) Also, Plaintiffs summarily assert that service
20 of a notice of a property violation constitutes “proof of intentional infliction of emotional
21 stress.” (*Id.*) These unadorned allegations fail to meet the pleading standards set forth in
22 *Twombly* and *Iqbal*.

23 Plaintiffs will be granted leave to file an amended complaint. The amended
24 complaint must aver sufficient facts to plausibly state claims under the ADA and the
25 Arizona common law action for intentional infliction of emotional distress. It also appears
26 that Plaintiff Van Hoang Cao is not a proper plaintiff in this action. The Complaint provides
27 no indication of any injury to her. In their amended complaint, Plaintiffs shall clarify the
28 basis for Plaintiff Cao’s claims.

1 Plaintiffs have filed a Motion to Strike and Motion for Sanctions (Doc. 7), as well
2 as a Motion to Amend (Doc. 9.). These motions are mooted by the instant Order.

3 **IV.**

4 Accordingly,

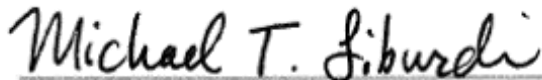
5 **IT IS ORDERED** granting Defendants' Motion to Dismiss. (Doc. 6.)

6 **IT IS FURTHER ORDERED** dismissing as moot Plaintiffs' Motion to Strike
7 Defendants' Motion to Dismiss and Motion for Sanctions. (Doc. 7.)

8 **IT IS FURTHER ORDERED** dismissing as moot Plaintiffs' Motion to Amend.
9 (Doc. 9.)

10 **IT IS FURTHER ORDERED** dismissing Plaintiff's Complaint with leave to
11 amend. Plaintiff may file an amended complaint within three (3) weeks of this order.

12 Dated this 22nd day of September, 2022.

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15 Michael T. Liburdi
16 Michael T. Liburdi
17 United States District Judge
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